IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

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WRIT PETITION NO : 20224 of 2004

Between:

M/s. Agri Gold Projects Limited, Regd. Office at 40-21/21,
Catholic Complex, M.G. Road, Vijayawada.

..... PETITIONER

AND

1 Andhra Pradesh State Electricity Regulatory Commission, 2nd Floor, Singareni Bhavan, Red Hills, Hyderabad Rep. by its Secretary.
2 Transmission Corporation of Andhra Pradesh Limited, Vidyut Soudha, Khairatabad, Hyderabad, Rep. by its Chairman & Managing Director.
3 Non-Conventional Energy Development Corporation Limited, (NEDCAP) Nampally, Hyderabad, Rep. by its Chairman & Managing Director.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of Certiorari by calling for the records of the 1st respondent in R.P.(SR) No.11 of 2004 filed seeking review of the orders dated 25-09-2003 in O.P.NO. 262 of 2003 and quash the orders dated
21-04-2004 and 25-09-2003 and consequently direct the 2nd respondent to purchase the entire power generated by the petitioner company forthwith by entering into necessary agreements.

Counsel for the Petitioner:MR.B.ADINARAYANA RAO

Counsel for the Respondent No.1: MR. RAGHURAM

Counsel for the Respondents: SMT.M.VINOBHA DEVI

The Court at the stage of admission made the following ORDER:

The petitioner had established a power generating unit with the approval of the concerned agencies. It entered into Power Purchase Agreement with the second respondent. The capacity of its unit is 4 MWs and it is running with the Biomass fuels. It intended to enhance its capacity from 4 MWs to 6 MWs. For this purpose, it submitted necessary proposal before the
Non-conventional Energy Development Corporation Limited (NEDCAP).

The petitioner contends that the NEDCAP cleared its proposal through its letter dated 02-12-2002. Based on that, the petitioner approached the Andhra Pradesh State Electricity Regulatory Commission (APSERC) for appropriate orders in the matter of issuing a direction to the second respondent to revise the Power Purchase Agreement. The APSERC rejected the application of the petitioner through its order dated 25-09-2003 in O.P.No.262 of 2003.

The petitioner submitted an application for review, which was numbered as R.P. (SR).No.11 of 2004. It was urged that some of the important aspects such as the communications, which emerge from NEDCAP, were not considered by the APSERC while passing orders in O.P.No.262 of 2003. The APSERC dismissed the review application through its order dated 21-04-2004. The same is challenged in this petition.

Learned counsel for the petitioner, Sri B.Adinarayana Rao, submits that in the review, the petitioner specifically pleaded that it holds necessary quantity of Biomass fuel for enhancing the capacity of the unit and the condition imposed by the APSERC for upgradation of the capacity of the petitioner is contrary to the record

and material placed before it. According to him, the plantation referred to in the order of APSERC, has already grown and become ripe for being used as Biomass fuel. Several other contentions were also urged.

Learned Standing Counsel for the second respondent,
Smt. M.Vinobha Devi, on the other hand, submits that the initial sanction in favour of the petitioner itself was subject to certain conditions and the present proposal does not accord with the same. She contends that in its original order as well as the order passed in review, the APSERC had taken the relevant factors into account and no interference is called for.

After hearing the learned counsel for the parties and after perusing the material papers placed before this Court and in particular, the orders passed by the APSERC, this Court is of the view that the Power Purchase Agreement between the petitioner and the respondent is governed by the factors, which are in the realm of two separate agencies. So far as the mode of generation of power is concerned, it is totally within the scope of NEDCAP. The nature of fuel and the capacity of generation in the particular area through that process are to be determined by the NEDCAP. The parameters of Power Purchase Agreement with particular reference to the need of the respondent and capacity of the petitioner are to be determined by the APSERC. While dealing with the applications or while passing the order in O.P.262 of 2003 or in the review petition, the APSERC has taken up on itself, to assess certain factors, which are totally in the realm of the NEDCAP. For example, the age of the plantation, the nature of the fuel, its utility for additional captivity etc., are the matters exclusively within the scope of the NEDCAP, whereas, they were extensively dealt with by the APSERC for rejecting the application of the petitioner. It is not as if the NEDCAP had rejected the case of the petitioner and the same is taken into account by the APSERC. This Court is of the view that the matter needs to be considered afresh by the APSERC confining itself to the requirement of the respondent to purchase additional power and fixation of the terms of the contract in the event of enhancement of the generating capacity. As regards the other aspects namely, the category of Biomass, the utility of the plantation grown by the petitioner etc., are concerned, the APSERC shall have to take the opinion expressed by the NEDCAP.

In that view of the matter, the order under challenge is set aside and the APSERC is directed to consider the matter afresh duly taking into account the

opinion expressed by the NEDCAP on the application submitted by the petitioner.

The writ petition is accordingly allowed. There shall be no order as to costs.

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(L.NARASIMHA REDDY, J)

31st DECEMBER, 2004.

Kvni/sh

To

1 The Secretary, Andhra Pradesh State Electricity Regulatory Commission, 2nd Floor, Singareni Bhavan, Red Hills, Hyderabad.
2 The Chairman & Managing Director, Transmission Corporation of Andhra Pradesh Limited, Vidyut Soudha, Khairatabad, Hyderabad.

3 The Chairman & Managing Director, Non-Conventional Energy Development Corporation Limited, (NEDCAP) Nampally, Hyderabad.

4 Two CD copies.